Supreme Court, U.S.
FILED

No. 991189 JAN 18 2000

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IN THE SUPREME COURT OF THE UNITED STATES

THERESSA RAINS JOHNSON,
Petitioner

V.

ANN W. ANDERSON,
Respondent

ON DIRECT PETITION FOR A
WRIT OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

THERESSA RAINS JOHNSON
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35pp

QUESTION PRESENTED

Whether these Florida statutes, Fl. Prob. C. Ch. 733.613 and 733.614, violate the Fifth and Fourteenth amendments of the Constitution of the United States of America, because they deprive a person of real property to which she is entitled.

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IN THE

Supreme Court of the United States

No. _____

THERESSA RAINS JOHNSON,
Petitioner,

v.

ANN W. ANDERSON,
Respondent.

---

petition for Writ of Certiorari to the Supreme Court of Florida

---

DIRECT PETITION FOR WRIT OF CERTIORARI

Theressa Rains Johnson respectfully petitions for a writ of certiorari to review the order of the Supreme Court of Florida, declining to accept jurisdiction and denying petition for review in this case.

OPINIONS BELOW

The opinion of the Fifth Judicial Circuit Court for Marion County, Florida is set forth in App.1a - 7a, the

opinion of the Fifth District Court of Appeal of Florida in App.8a-16a, the Supreme Court of Florida's Order is in App.18a-19a, and the Motion for Rehearing denied, Appendix (App.) 17a.

JURISDICTION

The Supreme Court of Florida issued its Order of denial on October 20, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. sections 1254 and 1257.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Fla. Prob. C. Ch. 733.613 states that ...no bona fide purchaser shall be required to examine any proceedings before the order of sale....(App.13a) Fla. Prob. C. Ch. 733.614, left untouched by the appellate Court, states that ...a successor personal representative shall not exercise any power made personal to the personal representative named in the will ....

Amendments V and XIV of the United States Constitution provide that... No state shall deprive any person of life, liberty, or property, without due process of Law. Article VI, paragraph 2, provides that the United States Constitution and the laws of the United States shall be the supreme Law of the Land.

STATEMENT

Petitioner was the Plaintiff in the civil division of the Circuit Court of the Fifth Judicial Circuit of Florida, in and for Marion County (trial court), and Appellee in the Fifth District Court of Appeal of Florida (5DCA). The Respondent was the Defendant in the trial court, and Appellant in the (5D CA).

Petitioner Johnson has been deprived of her 3.75 acre estate, based on the Respondent's contentions to ownership by a conveyance executed in conform-

ance with section 733.613, Florida Statutes (1996). Respondent's attempt to use this statute to estop probate proceedings of a Last Will and Testament with petitioner sole beneficiary violated her due process of law under U.S. Const. Amends 5 and 14. Respondent's use of this statute to justify not having a reasonably diligent search made of the public records before buying the real property at issue here is repugnant to the recording statutes.

Due process normally requires notice and an opportunity to be heard and, thus where any proceeding will finally determine a person's property rights, he is entitled to notice reasonably calculated, under all of the circumstances, to apprise him of pendency of proceeding and opportunity to present his claim or objections.

U.S.C.A.,Const. Amends. 5, 14.

The existing record on appeal will show that Petitioner did not receive notice of certain significant events in a manner conforming to due process.

FEDERAL FREEDOM OF INFORMATION ACT. The recording statutes require recordation of writings that pass or create an interest or right of some kind in land; and the word "interest", within statutes under which recordation of writings passing an interest in land is required, is the broadest term applicable to claims in or on realty, and the quoted word in its ordinary signification is broad enough to include any right, title, or interest in realty. A document is deemed to be filed the day it is received by a public office. Mo. - Moreland v. Paule, App., 659 S.W. 2d 609.

An index is designed as an additional means or facility for enabling persons interested to make a search of public

records and find the object of that search. Respondent had means of knowing about the recording of the Davis Williams' will before closing the sale and purchasing the real property. The will vested twenty per cent (20%) of the property she purchased to petitioner.

The trial court granted judgment of partition and appointment of commissioners for Petitioner, holding that the Probate Division of the Circuit Court determined a twenty per cent (20%) interest in the land for her, and that the statute 733.613 was unconstitutional with respect to the unique case at bar. The seller was authorized to sell the Edward Williams heirs estate. The Davis Williams estate is an undivided twenty per cent (20%) of the Edward Williams estate. The seller sold both estates without notice or joinder offer to petitioner(a divisee entitled to

the Davis Williams estate). This action deprived Petitioner of her U.S.C., Const. Amend. 14 rights.

On appeal, the 5DCA of Florida reversed the trial court and upheld, "inter alia", the statute 733.613. The 5DCA gave no reasoning at all to statute 733.614. Instead of applying the "per se rule of invalidity" with the burden of justification on the state, the Court adopted a "discriminatory approach" under which rest the broad issues, whether the state's interest is legitimate and whether the Court abused its appellate powers in this case. Moreover, citing as precedent Fla. State v. Turner, 224 So. 2d 290 (1969) the Court placed a "heavy burden of persuasion" on Petitioner. Evidence that would have made the precedent case badlaw was withheld from the record on appeal.

On October 20, 1999, The Supreme Court of Florida declined jurisdiction in the case and denied the petition (petitioner's Brief on Jurisdiction). The Court did not entertain a motion for Rehearing, citing Fla. R. App. P. 9.330(d) as the reason.

REASONS FOR GRANTING THE WRIT

The argument for review is simple and substantial. Fl. Prob. C. Ch. 733.613, a statute allegedly considered unconstitutional by the trial Court and was validated, and used by the Fifth District Court of Appeal of Florida (5DCA) to deprive the petitioner of real property vested to her by a will. The testator died October 13, 1995. The will was recorded in public records November, 1995 before the disputed real property was sold by an unauthorized seller. In such circumstances, under this Court's decisions the

constitutional infirmity of the law is plain. Moreover, if undisturbed, the decision of the 5DCA will be taken as precedent for application of a different inheritance clause.

I. The order of the Supreme Court of Florida declining jurisdiction and denying the petitioner's brief on jurisdiction made the appellate Court the state's Court of Last Resort. Therefore this Court should be invoked to protect a person against unjust state laws that deprive him or her of property justly entitled to.

U.S.C., Const. Amend. 14.

II. This is a case of great importance to the citizens of the United States of America. The Last Will and Testament of a person should be carried out as the testator stipulated. It is discrimination when a Law Court gives no scrutiny to a statement in a statute that one person could rely on, and on the other

hand, apply the strictest scrutiny to a statement of the same statute in favor of another person in the same case at bar. The 5DCA passed to an unsupported and insupportable denial of the evident discriminatory use and effect of the statute.

III. The decision of the 5DCA, if permitted to stand, could trigger widespread efforts in the states by heirs-at law and adverse purchasers to lay claim to and seize the property vested to divisees. This gives base to the significance of the misconstruction of the U.S. Constitution by the 5DCA.

CONCLUSION

No person should be deprived of his or her property because an alleged bona fide purchaser was granted a deed to it, by an unauthorized seller, without a notice of defects in the title of the seller, and without notice of another's

claim of right to, or equity in, property prior to his acquisition of title, has paid vendor a valuable consideration. The decision below collides with this Court's decisions and threatens such mischief that review should be granted, with summary reversal an appropriate disposition. This Court might find a basis for a differentiation; certiorari should be granted for plenary review of this question, which would surely be an important one.

Respectfully submitted,

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*Pro se of Record

APPENDIX

IN THE CIRCUIT COURT OF THE FIFTH
JUDICIAL CIRCUIT IN AND FOR
MARION COUNTY,FLORIDA.
CASE NO: 96-3992-CA-B

THERESSA RAINS JOHNSON, individually
and as Personal Representative
of the Estate of
Davis Williams, deceased,

Plaintiff,

vs.

ANN W. ANDERSON,

Defendant.
_____/

JUDGMENT OF PARTITION and
APPOINTMENT OF COMMISSIONERS

THIS ACTION for partition of real property pursuant to Chapter 64 of the Florida Statutes came to be heard before this Court. After considering the testimony and evidence, and reviewing the closing memoranda filed by the parties, the Court finds as follows:

1. The Plaintiff has standing to bring this suit for partition as the sole beneficiary of the Last Will and Testament of Davis Williams, deceased,

admitted to probate, In Re: the Estate of Davis Williams on the 8th day of August, 1996. By its order of February 4, 1997, in case number 2509-CP, the probate court determined that the Plaintiff was a fee simple title owner in the subject property.

2. The Plaintiff owns an undivided twenty percent (20%) interest and the Defendant, Ann W. Anderson, owns an undivided eighty percent (80%) interest in the real property at issue, located in Marion County, Florida, more particularly described as:

> East 1/2 of the SE 1/4 of the NE 1/4 of Section 34, Township 16 South, Range 22 East, EXCEPT road right of way. Parcel Number: 3730-000-00.

3. The testimony presented by the Defendant establishes that she obtained title to her interest in the subject property on June 28, 1996, pursuant to a Warranty Deed from Burt Coleman, as the Duly qualified Successor Personal

Representative of the Estate of Edward Williams. The Court recognizes that section 733.613, Fla. Stat.,states that "(n)o bona fide purchaser shall be required to examine any proceedings before the order of sale." However, the Court finds that the statute is unconstitutional as it applies to the unique facts and circumstances of this case. The Personal Representative, with a little effort and diligence, could have easily ascertained and notified the Plaintiff as an identifiable owner of an interest in the property prior to the sale to the Defendant. Further, the probate court in case number 2509-CP found that Bert Coleman, as Successor Personal Representative, was not authorized to sell the interest of the Plaintiff in and to the subject property.

Further, the closing agent (title

insurer insuring the title of the purchaser) was or should have been on notice of the Plaintiff's interest in the subject property. The evidence establishes that the Personal Representative furnished, to the closing agent prior to dispersal of the proceeds from the sale, a list of the names and addresses of the heirs/devisees who would receive a portion of the proceeds. Such action was completed prior to or simultaneous with the recording of the warranty deed and prior to the issuance of the title policy insuring Defendant's title as purchaser. Therefore, the law provides that the title company as closing agent acted with actual or imputed knowledge of the Plaintiff's interest in the property.

4. The Defendant and her husband testified that the property is unique in its configuration having a spring on the

southern end with running water leading to a pond and unique trees. Further, in reliance on this purchase, they acquired another 7.5 acres north of and contiguous to the subject property. Therefore, they allege that the property cannot be partitioned without great prejudice to them. However, the Plaintiff maintains that the property is divisible without prejudice to either party. Based on the conflicting claims, the Court finds that pursuant to section 64.061, Fla. Stat., commissioners will have to be appointed to make the partition or make a determination that partition cannot be made without prejudice to the owners. Accordingly, it is hereby:

ORDERED AND ADJUDGED:

1. Plaintiff, Theressa Rains Johnson, owns an undivided twenty percent (20%) undivided interest and Defendant, Ann W. Johnson, owns an undivided eighty percent (80%) interest as tenants in

common in the real property in Marion County, Florida described as:

> East 1/2 of the SE 1/4 of the NE 1/4 of Section 34, Township 16 South, Range 22 East, EXCEPT road right of way. Parcel Number: 3730-000-00.

2. As conflicting testimony exists as to whether the property is divisible, commissioners shall be appointed pursuant to section 64.061, Fla. Stat., to make the partition or make a finding to the Court that the property is indivisible.

3. Within fifteen (15) days of the date of this order, the parties shall submit three agreed upon names to the Court for appointment as commissioners. If the parties are unable to agree upon commissioners, they shall each submit three names to the Court. Upon receipt of the names, the Court shall appoint the commissioners to serve under the terms and conditions as established by subsequent order of the court.

4. Based upon the foregoing findings of fact and law, Defendant's Counterclaim for quiet title is denied.

5. The Court reserves jurisdiction as to the issue of attorney's fees and costs.

DONE AND ORDERED, in chambers in Ocala, Marion County, Florida, this 21 day of May, 1998.

" /S/ William T. Swigert "
WILLIAM T. SWIGERT
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was furnished by U.S. Mail and by fax this 21 day of May, 1998 to the following:

RALPH V. HADLEY, III, ESQ.
Post Office Box 1961
Winter Park, Fl 32790-1961

THERESSA RAINS JOHNSON
810 Saint Francis Street
Brooksville, Fl 34601

"/S/ Susan Rowe Keith "
Staff Attorney(352)620-3567

IN THE DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA FIFTH DISTRICT
JANUARY TERM 1999

ANN W. ANDERSON,

Appellant,

v.

THERESSA RAINS JOHNSON, ETC.,

Appellee.

Not Final Until The Time Expires To File Rehearing Motion And If Filed, Disposed Of.

Case No. 98-1781

Opinion filed April 23, 1999

Appeal from the Circuit Court
for Marion County,
William T. Swigert, Judge.

Ralph V. Hadley,III of Swann, Hadley and Alvarez, P.A., Winter Park, for Appellant.

Theressa Rains Johnson,
Brooksville, Pro se.

COBB, J.

Ann Anderson (Anderson) appeals from an adverse judgment of partition. She contends that she is the rightful owner of the real property in question pursuant to a conveyance executed in confor-

mance with section 733.613, Florida Statutes (1996).

The real property in question was originally owned by Edward Williams who died in 1960 and was survived by several children, including Davis Williams. Probate proceedings were begun but the Edward Williams estate was closed without a final disposition of the real property. In October, 1995, Davis Williams died testate, survived only by his stepdaughter, Theressa Johnson (Johnson). In November, 1995, Davis Williams' will, naming only Johnson, was filed with the clerk of the circuit court for safekeeping though no petition to admit the will to probate was filed at the time. In early 1996, Bert Coleman, on behalf of Edward Williams' heirs, entered into a contract to sell the property to Anderson. In March, 1996. Johnson advised Coleman that she wanted her interest in the land

as a home site.

Coleman thereafter petitioned the probate court to reopen the Edward Williams estate for a determination of heirs and appointment of successor personal representative. No notice of the petition was provided to Johnson. The probate court, by order dated June 5, 1996, reopened the estate, appointed Coleman as successor personal representative and determined the heirs of Edward Williams. Johnson was not listed as an heir. The court also authorized the sale of the property to Anderson. Anderson took title to the property on June 28, 1996, pursuant to a deed from Coleman. The closing agent, pursuant to a directive from Coleman, sent a check to Johnson for her interest. Johnson rejected the check. In August, 1996, Johnson filed a petition to admit Davis Williams' will to probate and to amend the order deter-

mining heirs and authorizing sale. Anderson was not afforded notice of this action. By order dated February 4,1997, the probate court ruled that Coleman was not authorized to sell the estate of Davis Williams' interest in the property and ruled that the conveyance to Anderson did not include said interest.

Johnson meanwhile sued Anderson for partition. Anderson counterclaimed to quiet title to the property. Following a non-jury trial, the court entered the order being appealed, ruling that Johnson owned an undivided 20% interest in the property. The court further explained:

> The Court recognizes that section 733.613, Fla. Stat., states that "(n)o bona fide purchaser shall be required to examine any proceedings before the order of sale." However, the Court finds that the statute is unconstitutional as it applies to the unique

> facts and circumstances of this case. The Personal Representative, with a little effort and diligence, could have easily ascertained and notified the Plaintiff as an identifiable owner of an interest in the property prior to the sale to the Defendant. Further, the probate court in case number 2509-CP found that Bert Coleman, as Successor Personal Representative, was not authorized to sell the interest of the Plaintiff in and to the subject property.

The court appointed commissioners "to make partition or make a finding to the Court that the property is indivisible." The court denied Anderson's counterclaim.

Section 733.613 provides in relevant part:

> (1) When a personal representative of a decedent dying intestate, or whose testator has not conferred upon him a power of sale or whose testator has granted a power of sale but his power is so limited by the will or by operation of law that it cannot be conveniently exercised,

> shall consider that it is for the best interest of the estate and of those interested in it that real property be sold, the personal representative may sell it at public or private sale. No title shall pass until the sale is authorized or confirmed by the court. Petition for authorization or confirmation of sale shall set forth the reasons for this sale, a description of the property sold or to be sold, and the price and terms of the sale. Except when interested persons have joined in the petition for sale of real property or have consented to the sale, notice of the petition shall be given . No bona fide purchaser shall be required to examine any proceedings before the order of sale. (Emphasis added).

Anderson correctly points out that the issue of the constitutionality of section 733.613 was never raised in the pleadings. The order does not reflect which particular provision(s) of the constitution is implicated. Under these circumstances, the trial court erred in finding the statute to be unconstitutional. See

State v. Turner, 224 So. 2d 290 (Fla. 1969).

Further, the evidence below was that Anderson had no knowledge of Johnson's existence or her claim. Johnson's response is that while Anderson may have lacked actual notice, she had constructive notice due to the filing of the will with the clerk of the court. But constructive notice of what? The closing agent testified that she knew at the time of the closing about Johnson's claim to a 20% interest in the subject property based upon the will. The closing agent, however, was instructed by Coleman to cut checks to each of the co-owners so the agent sent Johnson a check for her 20% interest out of the sale proceeds, a check which Johnson rejected.

Thus while the closing agent knew of Johnson's interest in the subject pro-

perty, Coleman, who had court authorization to sell the property, directed checks be written to each of the heirs. Coleman may be guilty of negligence or perhaps an outright misrepresentation in informing the probate court that all the heirs had consented to the sale. However, Anderson was in no way at fault here since her only notice of Johnson's interest would have been constructive notice (the recording of the will) which in itself in no way indicated to Anderson (or to the closing agent for that matter) that Johnson refused to authorize the sale of her interest in the property. Indeed, Coleman represented that the heirs had authorized the sale and the June 6, 1996 order of the probate court accordingly gave Coleman authority to sell the property to Anderson. Anderson had every right to rely on that order

unless and until it was set aside. See section 733.613, Fla. Stat. It was not set aside (partially, as to Johnson's interest) until February 4, 1997, after the sale. Anderson took title pursuant to a probate court order which by statute she was entitled to rely upon.

The partition order is reversed.

REVERSED.

GOSHORN and ANTOON, JJ.,concur.

IN THE DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA FIFTH DISTRICT

ANN W. ANDERSON,
Appellant,

v. CASE NO. 98-1781

THERESSA RAINS JOHNSON,
etc., Appellee.

DATE: May 20, 1999

BY ORDER OF THE COURT:

ORDERED that Appellee's Motion For Rehearing, filed May 3, 1999, is denied.

I hereby certify that the foregoing is (a true copy of) the original Court order.
DISTRICT COURT OF APPEAL
" /S/ Frank J. Habershaw, "
FIFTH DISTRICT STATE OF FLORIDA
FRANK J. HABERSHAW, CLERK

cc: Ralph Hadley, III, Esq.
Theressa Rains Johnson

SUPREME COURT OF FLORIDA

WEDNESDAY, OCTOBER 20, 1999

THERESSA RAINS JOHNSON, *
*
Petitioner, *
*
vs. *
*
*
ANN W. ANDERSON, *
*
Respondent. *

****

CASE NO. 95,867

District Court of Appeal,
5th District - No. 98-1781

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be

entertained by the Court. See Fla. R. App. P. 9.330(d).

SHAW, WELLS, ANSTEAD, PARIENTE and QUINCE, JJ.,concur.

A True Copy P REME COURT OF THE
TEST: U SAT CITO SI RECTE
S
"/S/ Debbie Causseaux"
STATE OF FLORIDA

Debbie Causseaux
Acting Clerk,
Supreme Court

BH

cc: Hon.Frank J. Habershaw,Clerk
Hon.David R. Ellspermann,Clerk
Hon.William T. Swigert,Judge

Mr. Ralph V. Hadley,III
Ms. Theressa Johnson

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(2)

No. 99-1189

IN THE

Supreme Court of the United States

THERESSA RAINS JOHNSON,

Petitioner,

v.

ANN W. ANDERSON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT OF FLORIDA

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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18pp

QUESTION PRESENTED FOR REVIEW

Does a state probate statute, which states that no bona fide purchaser of real property from an estate shall be required to examine any proceedings before the order of sale, violate an heir's right to due process as guaranteed by the Fifth and Fourteenth Amendments?

PARTIES TO THE PROCEEDING

All of the parties to this proceeding are set forth in the caption.

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A. This Court should decline to consider this constitutional issue, as it was not raised in the pleadings in the state court. 6

B. The Statues of which the Petition complains represent a constitutional exercise of the State's power with which this Court should not interfere. 7

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OPINIONS BELOW

The opinion of the Supreme Court of Florida in Johnson v. Anderson, Case No. 95,867, may be found at 744 So. 2d 454 (1999). The opinion of the Florida District Court of Appeal in Anderson v. Johnson, Case No. 98-1781, may be found at 732 So. 2d 423 (1999).

STATEMENT OF JURISDICTION

This Court has jurisdiction over this proceeding under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

Fla. Stat. § 733.613 (1999) (Personal representative's right to sell real property) provides:

> (1) When a personal representative of a decedent dying intestate, or whose testator has not conferred upon him or her a power of sale or whose testator has granted a power of sale but his or her power is so limited by the will or by operation of law that it cannot be conveniently exercised, shall consider that it is for the best interest of the estate and of those interested in it that real property be sold, the personal representative may sell it at public or private sale. No title shall pass until the sale is

authorized or confirmed by the court. Petition for authorization or confirmation of sale shall set forth the reasons for the sale, a description of the property sold or to be sold, and the price and terms of the sale. Except when interested persons have joined in the petition for sale of real property or have consented to the sale, notice of the petition shall be given. No bona fide purchaser shall be required to examine any proceedings before the order of sale.

(2) When a decedent's will confers specific power to sell or mortgage real property or a general power to sell any asset of the estate, the personal representative may sell, mortgage, or lease, without authorization or confirmation of court, any real property of the estate or any interest therein for cash or credit, or for part cash and part credit, and with or without security for unpaid balances. The sale, mortgage, or lease need not be justified by a showing of necessity, and the sale pursuant to power of sale shall be valid.

Fla. Stat. § 733.614 (1999) (Powers and duties of successor personal representative) states:

> A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate as expeditiously as possible, but he or she shall not exercise any power made personal to the personal representative named in the will.

STATEMENT OF THE CASE

Procedural History

The Petitioner Theressa Rains Johnson brought an action for partition against the Respondent Ann W. Anderson in the Circuit Court for Marion County, Florida (Case No. 98-1781). Anderson counterclaimed to quiet title to the property, which she had purchased from the estate of Edward Williams pursuant to a conveyance executed in conformance with §733.613, Florida Statutes (1996). After a nonjury trial, the court declared the statute unconstitutional and ruled that Johnson owned an undivided 20 percent interest in the property. The court appointed commissioners "to make partition

or make a finding to the Court that the property is indivisible" and denied Anderson's counterclaim.

Anderson appealed to the Florida District Court of Appeal, Fifth District. In an opinion filed April 23, 1999, the court reversed the partition order. It found no basis for declaring §733.613 unconstitutional and concluded that Anderson had taken title to the real property pursuant to a probate court order on which, by statute, she was entitled to rely. The court denied Johnson's Motion for Rehearing in an order dated May 20, 1999. In an order filed October 22, 1999, the Supreme Court of Florida denied to accept jurisdiction and denied Anderson's Petition for Review. It stated that it would not entertain a Motion for Rehearing.

Johnson then filed this Petition for Writ of Certiorari in this Court on January 18, 2000.

Facts

The real property in question was owned by Edward Williams, who died in 1960. He was survived by several children, including Davis Williams. Although probate proceedings were begun, the estate of Edward Williams was closed without a final disposition of the real property.

Davis Williams died testate in October, 1995. His stepdaughter Theressa Rains Johnson, the Respondent, was his

sole survivor and sole named beneficiary. In November, 1995, the will of Davis Williams was filed with the Clerk of the Circuit Court for safekeeping, although a petition to admit the will to probate was not filed at that time.

In early 1996, Bert Coleman, acting on behalf of the heirs of Edward Williams, entered into a contract to sell the property to Anderson. In March, 1996, Johnson informed Coleman that she wanted her interest in the land to build a home. Coleman then petitioned the Probate Court to reopen the Edward Williams estate for a determination of heirs and the appointment of a successor personal representative. Johnson was not given any notice of the petition. In an order dated June 5, 1996, the Probate Court reopened the estate, appointed Coleman as successor personal representative, and determined the heirs of Edward Williams. Johnson was not listed as an heir. The court also authorized the sale of the real property to Anderson. She took title to the property on June 28, 1996, pursuant to a deed from Coleman. Coleman directed the closing agent to send a check to Johnson for her interest, but she rejected it.

In August, 1996, Johnson filed a petition to admit the will of Davis Williams to probate and to amend the order determining heirs and authorizing the sale of the property. Anderson did not receive notice of this action. The Probate Court ruled, by order dated February 4, 1997, that Coleman lacked authority to sell the interest of the estate of Davis Williams in the property and that the conveyance to Anderson excluded that interest.

Johnson then sued Anderson for partition; Anderson counterclaimed to quiet title. The county circuit court, sit-

ting without a jury, ruled that Johnson owned an undivided 20 percent interest in the property and declared that Fla. Stat. §733.613 was unconstitutional.

The Florida District Court of Appeal, Fifth District, held that the trial court erred in finding the statute unconstitutional. Finding that Anderson had no knowledge of Johnson's existence or of her claim, the court concluded that Anderson was in no way at fault. Anderson's only notice of Johnson's interest would have been constructive notice, stemming from the recording of the will, which did not indicate to Anderson that Johnson had refused to authorize the sale of her interest in the property. The court concluded that Anderson was entitled to rely on the June 6, 1996, order of the Probate Court that gave Coleman the right to sell the property.

ARGUMENT -A STATE PROBATE STATUTE, WHICH STATES THAT NO BONA FIDE PURCHASER OF REAL PROPERTY FROM AN ESTATE SHALL BE REQUIRED TO EXAMINE ANY PROCEEDINGS BEFORE THE ORDER OF SALE, DOES NOT VIOLATE AN HEIR'S RIGHT TO DUE PROCESS AS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS

The Petitioner takes the position in this case that the Florida District Court of Appeal improperly reversed the trial court's partition order in her favor and should have affirmed the trial court's holding that Fla. Stat. §733.613 was unconstitutional under the circumstances of this case. The Petitioner's contentions are unsupported by the prior decisions of

this Court, and her Petition should be denied for the following reasons.

A. This Court should decline to consider this constitutional issue, as it was not raised in the pleadings in the state court.

The review of a state court decision by this Court may be barred by a petitioner's failure to raise constitutional claims in the state court. In Cardinale v. Louisiana, 394 U.S. 437, 438 (1969), this Court stated that "[it] was very early established that the Court will not decide federal constitutional issues raised here for the first time on review of state court decisions."

Although the Florida trial court did consider the constitutionality of Fla. Stat. §733.613, the Petitioner never raised this issue in her pleadings. In addition, the Petitioner seems to have raised for the first time in her Petition to this Court the issue of the constitutionality of Fla. Stat. §733.614, which provides that a successor personal representative of an estate has the same power and duty as the original personal representative.

In short, only now does the Petitioner seek to hang her hat, jurisprudentially speaking, on the peg of unconstitutionality. In that sense, she has raised the constitutionality issues here for the first time, and this Court should decline to consider them for that reason.

B. The statutes of which the Petition complains represent a constitutional exercise of the State's power with which this Court should not interfere.

This Court has long recognized that nothing in the Constitution forbids a state legislature from limiting, conditioning, or abolishing the power of testamentary disposition over property within its jurisdiction. See Irving Trust Co. v. Day, 314 U.S. 556, 562 (1942). Due process requires, of course, that a state action affecting property must generally be accompanied by notification of that action. In Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950), this Court observed:

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonable calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

Mullane cautioned, however, that "if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met, the constitutional requirements are satisfied." Id., at 314-15.

In applying the principles of Mullane in the years since that decision was rendered, this Court has balanced the inter-

est of the State and the individual interest sought to be protected by the Fourteenth Amendment. See Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478, 484 (1988). The Court recognized that, as the State "undeniably has a legitimate interest in the expeditious resolution of probate proceedings," a State could reasonably conclude that the swift settlement of estates is of considerable importance. Id., at 489.

This Court has on many occasions given deference to the actions of the people of a State through their legislature to regulate property rights. See, e.g., Labine v. Vincent, 401 U.S. 532, 536 (1971)(holding that the Louisiana statutory intestate succession scheme is within the State's power to establish rules for, inter alia, the disposition of property). This Court has also recognized that the Federal Constitution does not give it the power to overturn the State's choice of rules merely because the Justices believe that they can provide better rules. Id., at 538. It is beyond question that a State has the power to make laws for the distribution of property that is within the State. Id., at 539. Under the circumstances of Pope, supra, this Court concluded that "there is nothing in the vague generalities of the Equal Protection and Due Process Clauses which empowers this Court to nullify the deliberate choices of the elected representatives of the people. . . ." Id. at 540.

In Mullane, supra, a New York trust company had exclusive management and control of a common trust fund established by it under a state banking law to invest assets of numerous small trusts of which it was trustee. The trust company petitioned for a judicial settlement of accounts that

would be binding and conclusive as to any matter upon everyone having any interest in the common fund or in any participating trust. Although the Court held that the beneficiaries' notice by publication, called for by the banking statute, was inadequate under the circumstances, it stated that, in general, it was not unreasonable

> for the State to dispense with more certain notice to those beneficiaries whose interests are either conjectural or future or, although they could be discovered, upon investigation, do not in due course of business come to the knowledge of the common trustee.

339 U.S. at 317.

The Court explained that the practical difficulties and costs associated with notifying interested parties must be considered, because

> such impracticable and extended searches are not required in the name of due process. . . . These are practical matters in which we should be reluctant to disturb he judgment of the state authorities.

Id. at 317-18.

If, as Mullane urges, this Court will give "due regard for the practicalities and peculiarities of the case," then it will decline to interfere with Florida's probate scheme that would appear, on the face of it, to be intended to achieve two important public policy objectives: (1) to encourage the timely and efficient settlement of estates; and (2) to facilitate the marketability of real property passing from an estate by permitting a bona fide purchaser to rely on the order of sale without having to examine the proceedings that were held before the issuance of that order.

Chaos would likely ensue if every party wishing to purchase real property from an estate were required to go behind the order of sale to conduct an exhaustive search of the probate and real property records to determine whether the personal representative who is offering the property for sale was properly authorized to do so.

The circumstances of this case clearly demonstrate why the probate statute of which Johnson complains is necessary. Anderson could not have been expected to have discovered the existence of Johnson and of her claim on the real estate without an unduly lengthy, impractical, and expensive search of the probate and real property records. Section 733.613 offers the reassurance that is necessary to insure that prospective purchasers of real property from personal representatives of estates will not be scared away by the expense, difficulty, and uncertainty associated with verifying for themselves that nothing was amiss in the settlement of the estate, the appointment of the personal representative, and

the manner in which the personal representative carried out his or her duties.

In short, a prospective purchaser is entitled to accept at face value the order of sale authorizing the disposition of the estate's property. That this may present difficulties for a particular heir in a highly unusual set of circumstances is unfortunate, but it does not justify eliminating a procedure that serves the vast majority of the population, heirs and bona fide purchasers alike, well.

CONCLUSION

The Respondent respectfully requests that this Court deny the Petition for Writ of Certiorari for the reasons stated above.

Respectfully submitted,

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Supreme Court, U.S.
FILED
FEB 25 2003
CLERK

(3)

No. 99-1189

In The
Supreme Court of the United States

THERESSA RAINS JOHNSON,
Petitioner,

v.

ANN W. ANDERSON,
Respondent.

On Direct Petition For Writ Of Certiorari To The Supreme Court of Florida

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REPLY TO BRIEF IN OPPOSITION

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15pp

QUESTION PRESENTED FOR REVIEW

Whether these Florida statutes, Fl. Prob. C. Ch. 733.613 and 733.614, violate the Fifth and Fourteenth Amendments of the Constitution of the United States of America, because, as applied, they deprive a person of real property to which she is entitled.

PARTIES TO THE PROCEEDINGS

The names of all parties who joined in this case are listed in the caption.

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OPINIONS BELOW

The reasonings and the decisions that base the opinions; and the opinions are reproduced in the appendix to the direct petition for writ of certiorari.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. sections 1254 and 1257.

STATUTORY PROVISIONS INVOLVED

Fla. Prob. C. Ch. 733.613, found in the appendix to the petition on pages 12a and 13a. Fla. Prob. C. Ch. 733.614, mentioned in the petition on page 7 and the emphasis added statement on page 2.

STATEMENT OF THE CASE

Procedural History

The circuit court case on judicial partition of undeveloped, undivided real property in Marion County, Florida is case No. 96-3992-CA-B, therefore, the 98-1781 is an error. (see appendix to the petition page 1a)

In November, 1996 defendant Anderson filed a third party complaint in the circuit court of Marion County, Florida but did not pursue it.

In April, 1997 Anderson filed a motion for summary judgment that was

denied in June, 1997.

In November, 1997 Anderson filed a motion for mediation of a settlement in case No. 96-3992-CA-B (partition) and it was granted. The mediation conference ended in an impasse on January 14, 1998.

In March, 1998 Anderson filed a motion for leave to file a counter - claim and counterclaim to quiet title, both at the same time. The counter - claim for quiet title was denied May 21, 1998.

On Monday, April 27, 1998 a non-jury trial on the partition case was held. On May 21, 1998 judgment of partition and appointment of commissioners was ordered by the circuit court of Marion County, Florida. Anderson appealed to the District Court of Appeal of the state of Florida Fifth District (5th DCA).

On Monday, March 15, 1999 oral arguments were heard in the 5th DCA with Honorable Warren H. Cobb, presiding judge. On April 23, 1999 the district court reversed the judgment of partition. Appellee Johnson filed a timely motion for rehearing which was denied 20th May, 1999.

On June 11, 1999 Johnson filed a notice with the 5th DCA to invoke the discretionary jurisdiction of the supreme court of Florida. The clerk of the supreme court of Florida received and filed the notice on June 25, 1999. On On October 20, 1999 the supreme court

of Florida declined to accept jurisdiction and denied Johnson's brief on jurisdiction. No motion for rehearing was allowed due to Fla. R. App. P. 9.330(d)

Johnson hand delivered forty copies of the petition for writ of certiorari to a clerk of the United States Supreme Court on December 20, 1999. The petition was acceptable but the attached appendix had to be reformatted to comply with the type size of the petition. With necessary corrections, the petition was returned to the clerk of this court by U, S. Mail on January 18, 2000.

Facts

On page 4 of the brief in opposition, first paragraph, line 10 the name is wrong, it should be ... denied Johnson's petition for review.

Under facts, page 4 of the brief in opposition second paragraph, his stepdaughter Theressa Rains Johnson, the Respondent, the term Respondent is incorrect, Johnson is the Petitioner in this case. Johnson is the sole beneficiary named in the Davis Williams' will and the testator named her as his choice for personal representative of his estate. The safekeeping term is in need of determination because the copy of the will has a certified stamped date, filed 95 Nov. 27 PM 1:07, and recorded Nov. 28,1995in Book 2196, page 377-380. From that moment the will became a document in the public records of Marion County, Florida.

In March, 1996, Johnson informed

Coleman, the grantor, that she wanted her interest in the land as a home site, before the authorization to sell and before the sale of the land at issue here.

Johnson was not given a notice as required in Florida statute 733.613, therefore she did not know about the Coleman petition to reopen the Edward Williams estate.

There is no mention about Florida statute 733.613 in the June 5,1996 order authorizing Coleman to sell the real property to Anderson. Further, this order authorized the sale of Edward Williams' heirs estate and not the portion of the land that make up the Davis Williams estate.

Johnson's first knowledge that the real property had been sold was the receiving of the check in the amount of $8,308.42, from the closing agent on or about July 03, 1996. This is about one-half of the amount Johnson would have demanded if she authorized Coleman to sell her interest, which she did not. A warranty deed was conveyed to Anderson by Coleman on June 28, 1996.

From August, 1996 to February 4, 1997 is approximately six months. This gave enough time for counsel on behalf of Anderson to state any objections he had about the probate proceedings on behalf of Johnson. Yet he did nothing. After the February 4, 1997 order by the probate court determined Johnson to be a feasimple owner of 20% of the land sold to Anderson, counsel on behalf of Anderson began the "no notice" clamor.

In the transcript of the trial it is alleged that the closing agent knew of the Davis Williams Will before the sale of the land, yet she did not stop the closing. Both Anderson and the closing agent had means or ways of knowing that Johnson had an interest in the land and that Coleman was not authorized to sell that interest, not by the probate court nor by Johnson.

Johnson sued Anderson for partition of the land in August, 1996. Anderson filed a motion to file a counterclaim in March, 1998, more than one and a half years later. The record on appeal can clear up the misleading statements. The county circuit court, did not need to determine whether Johnson owned a 20% interest in the property at issue, the probate court division had made that determination in its February 4, 1997 order.

A partition suit depends on two elements, (1) the defendant must be in possession of the property and (2) the plaintiff must have an immediate legal right or claim to the land in dispute. Both are met in this case, therefore Anderson is the right party to sue.

There is a document that was filed with the trial court that included a statement about the constitutionality of statute 733.613, but taken out of context, the statement came to be a direct allegation that the trial court ruled the statute unconstitutional. The trial court wrote,"However, the court finds that the statute is unconstitutional as it applies to the unique facts and circumstances of this case."

The 5th DCA of Florida implicated a use and duty of statute 733.613 that it cannot uphold. That statute cannot warrant a bonafide purchaser, of real property, a deed free of defects and claims against it.

ARGUMENT

The petitioner's contentions are supported by prior decisions of the United States Supreme Court.

All of the case citations in the respondent's brief in opposition are dissimilar to the fact patterns of the instant case.

The," was not raised in the pleadings in the state's trial court" is a taylor made issue with evidence to rebut it withheld from the record on appeal in a letter of directions to the clerk of the 5th DCA. The United States Supreme Court should grant the writ of certiorari to correct the injustice done to deprive a devisee of real property she inherited, through a will.

Cardinale v. Louisiana is a case that involve criminal action, the instant case is civil action. The rules and statutes are applied differently by the two actions.

Irving Trust Co. v. Day
This case involves contract law and wills. The three level court system of the state of New York is different from that of the rest of the states. The trial court of, and the appellate court of Florida have found the Davis Williams will valid and that Johnson is the sole beneficiary of his estate.

Disposition to the heirs at law is not an issue in the instant case.

Mullane v. Central Hanover Bank & Trust Co.

The citation concerning the "notice" is exactly how Johnson was passed over by Coleman, thus denying her due process, therefore violating her fourteenth amendments rights.
This case involves banks and banking under the New York Banking Law, section 100-c, c. 687,L. 1937.

Tulsa Professional Collection Services, Inc. v. Pope

There are no creditors bringing claims against the Edward Williams heirs estate nor the Davis Williams estate.

Labine v. Vincent

This case involves an illegitimate child, through her tutrix, sort to claim a decedent's estate. Louisiana intestate succession provisions precluded illegitimate children, from claiming rights of legitimate children.

All of the cases cited in respondent's brief in opposition are dissimilar to the instant case.
All of the cites for these cases can be found in the table of citations in the

respondent's brief in opposition.

There would be fewer lawsuits about real property ownership and defects in titles by deeds if the attorney doing the probate proceedings, or a title agent, or the purchaser did a diligent search of the appropriate public records, with regards to the land he/she wishes to purchase, before the sale.

The Fl. Prob. C. Ch. 733.613 is lacking legal constructive interpretation, as an appellate court in the state of Florida applied it in a manner that violates a citizen's fourteenth amendment rights.

Where the circuit court of Florida decided an issue and provided information not touched on by the appellate court, the circuit court's opinion is authoritative. In the Johnson case the judgment of partition should not have been reversed.

Certiorari is granted to review not just a decision of the "highest court" of a state, but of the highest court in the state "in which a decision could be had". This statement takes note of the internal strictures a state may impose on appeals within its own court system, perhaps stopping a case at some lower level and barring it from review by the state's highest court, or, for that matter, from any appellate court at all. The instant case is such a case.

The United States Supreme Court review only final judgments of highest available state courts to prevent its interference with state proceedings when the underlying dispute may be otherwise resolved. The instant case is pursueing from a final order, of Florida's 5th DCA, as the Supreme Court of Florida denied review.

"While the state, under some circumstances, may sue (as parens patriae) for the protection of its citizens, it is no part of its duty or power to enforce their rights in respect of their relations with the federal government. In that field it is the United States, and not the state, which represents them as parens patriae, when such representation becomes appropriate; and to the former, and not to the latter, they must look for such protective measures as flow from that status."

A devisee's inheritance has been taken from her by a Florida appellate' court's use of an unconstitutionally applied Florida statute. All devisees need federal protection from a state that allows such misdeeds.

CONCLUSION

This case presents serious due process issues concerning two Florida statutes. I can think of no case of more transcending public importance than this one.

Petitioner respectfully requests this court grant certiorari to review the issues.

Respectfully submitted,

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